

1 copies of all records filed in it under this subchapter, in every medium from time to
2 time available to the department of financial institutions.

***NOTE: NCCUSL Legislative Notes:

2. A state that elects not to require real-estate filing offices to comply with either or both of subs. (5) and (6) should specify in the appropriate subsection(s) only the filing office described in s. 409.501 (1) (b).

***NOTE: The phrase “filing office described in s. 409.501 (1) (b)” is retained but changed to department of financial institutions because Subsection (6) is not modified for the two-year period after the effective date.

3 (7) LIABILITY OF FILING OFFICER. No filing officer nor any of the filing officer’s
4 employees or agents shall be subject to personal liability by reason of any error or
5 omission in the performance of any duty under this chapter except in case of
6 misconduct as defined in s. 946.12.

***NOTE: Subsection (7) carries over current s. 409.407 (3).

7 **409.524 Delay by filing office.** Delay by the filing office beyond a time limit
8 prescribed by this subchapter is excused if:

9 (1) The delay is caused by interruption of communication or computer
10 facilities, war, emergency conditions, failure of equipment, or other circumstances
11 beyond the control of the filing office; and

12 (2) The filing office exercises reasonable diligence under the circumstances.

13 **409.525 Fees. (1) INITIAL FINANCING STATEMENT OR OTHER RECORD.** Except as
14 otherwise provided in this section, the fee for filing and indexing a record under this
15 subchapter and the portion of the fee that an office duly authorized by the
16 department under s. 409.501 (1) (b) may retain shall be prescribed by filing-office
17 rule.

18 (2) BASIS FOR RULE. The rule under sub. (1) must set the fees for filing and
19 indexing a record under this subchapter on the following basis:

1 (a) If the record presented for filing is communicated to the filing office in
2 writing and consists of more than 2 pages, the fee for filing and indexing the record
3 must be at least twice the amount of the fee for a record communicated in writing that
4 consists of 1 or 2 pages; and

5 (b) If the record is communicated by another medium authorized by
6 filing-office rule, the fee for filing and indexing the record must be no more than 50%
7 of the amount of the fee for a record communicated in writing that consists of 1 or 2
8 pages.

9 (3) NUMBER OF NAMES. The number of names required to be indexed does not
10 affect the amount of the fee under this section.

****NOTE: NCCUSL Legislative Notes:

2. A state should enact sub. (3), Alternative A, and omit the bracketed language in subs. (1) and (2) unless its indexing system entails a substantial additional cost when indexing additional names.

****NOTE: Subsection (3) is alternative A.

11 (4) RESPONSE TO INFORMATION REQUEST. Except as otherwise provided in this
12 section, the fee for responding to a request for information from the filing office,
13 including for communicating whether there is on file any financing statement
14 naming a particular debtor, and the portion of the fee that an office duly authorized
15 by the department under s. 409.501 (1) (b) may retain shall be prescribed by
16 filing-office rule. The fee for responding to a request communicated in writing must
17 be not less than twice the amount of the fee for responding to a request communicated
18 by another medium authorized by filing-office rule. This subsection does not require
19 that a fee be charged for remote access searching of the filing-office data base. The
20 rule promulgated pursuant to this subsection need not specify a fee for remote access
21 searching of the filing-office data base.

****Note: The bracketed “communicating” is retained and the bracketed “issuing a certificate showing” is deleted.

1 (5) RECORD OF MORTGAGE. This section does not require a fee with respect to a
2 record of a mortgage which is effective as a financing statement filed as a fixture
3 filing or as a financing statement covering as-extracted collateral or timber to be cut
4 under s. 409.502 (3). However, the recording and satisfaction fees that otherwise
5 would be applicable to the record of the mortgage apply.

****NOTE: This draft requires the department of financial institution to set the fees by rule, instead having the fees set by statute. This section follows the UCC Enactment guide recommendations for this section if fees are set by rule and adds conforming language to ch. 59.

6 **409.526 Filing-office rules. (1) PROMULGATION OF FILING-OFFICE RULES.** The
7 secretary of financial institutions shall promulgate filing-office rules to implement
8 this chapter. The filing-office rules must be:

- 9 (a) Consistent with this chapter; and
10 (b) Promulgated in accordance with ch. 227.

11 (2) HARMONIZATION OF RULES. To keep the filing-office rules and practices of the
12 filing office in harmony with the rules and practices of filing offices in other
13 jurisdictions that enact substantially this subchapter, and to keep the technology
14 used by the filing office compatible with the technology used by filing offices in other
15 jurisdictions that enact substantially this subchapter, the secretary of financial
16 institutions, so far as is consistent with the purposes, policies, and provisions of this
17 chapter, in promulgating filing-office rules, shall:

- 18 (a) Consult with filing offices in other jurisdictions that enact substantially this
19 subchapter;

1 (b) Consult the most recent version of the Model Rules promulgated by the
2 International Association of Corporate Administrators or any successor
3 organization; and

4 (c) Take into consideration the rules and practices of, and the technology used
5 by, filing offices in other jurisdictions that enact substantially this subchapter.

6 **409.527 Duty to report.** The department of financial institutions shall
7 include in its report under s. 15.04 (1) (d) a report on the operation of the filing office.

8 The report must contain a statement of the extent to which:

****NOTE: “shall include in its report under s. 15.04 (1) (d)” is substituted for the
bracketed “annually on or before _____ to the Governor and Legislature”. The change
requires a biennial report be included in the department’s currently required biennial
report, rather than requiring an annual report be sent separately to the governor and
legislature.

9 (1) HARMONIZATION OF RULES: FILING OFFICES IN OTHER JURISDICTIONS. The
10 filing-office rules are not in harmony with the rules of filing offices in other
11 jurisdictions that enact substantially this subchapter and the reasons for these
12 variations; and

13 (2) HARMONIZATION OF RULES: MODEL RULES. The filing-office rules are not in
14 harmony with the most recent version of the Model Rules promulgated by the
15 International Association of Corporate Administrators, or any successor
16 organization, and the reasons for these variations.

17 **409.528 Statewide lien system. (1) ESTABLISHMENT AND MAINTENANCE.** The
18 department shall establish and maintain and the office of each register of deeds in
19 this state shall establish services necessary to support a statewide lien system under
20 this subchapter.

1 **(2) USE.** Except as otherwise provided in this chapter, each filing officer shall
2 enter all information filed under this subchapter into the statewide lien system
3 under sub. (1).

 ****NOTE: Current Wisconsin law has added s. 409.410 to this subject matter.
Section 409.528 above is current s. 409.410 modified to fit the new ch. 409.

4 SUBCHAPTER VI

5 DEFAULT

6 **409.601 Rights after default; judicial enforcement; consignor or buyer**
7 **of accounts, chattel paper, payment intangibles, or promissory notes. (1)**

8 RIGHTS OF SECURED PARTY AFTER DEFAULT. After default, a secured party has the rights
9 provided in this subchapter and, except as otherwise provided in s. 409.602, those
10 provided by agreement of the parties. A secured party:

11 (a) May reduce a claim to judgment, foreclose, or otherwise enforce the claim,
12 security interest, or agricultural lien by any available judicial procedure; and

13 (b) If the collateral is documents, may proceed either as to the documents or as
14 to the goods they cover.

15 **(2) RIGHTS AND DUTIES OF SECURED PARTY IN POSSESSION OR CONTROL.** A secured
16 party in possession of collateral or control of collateral under s. 409.104, 409.105,
17 409.106, or 409.107 has the rights and duties provided in s. 409.207.

18 **(3) RIGHTS CUMULATIVE; SIMULTANEOUS EXERCISE.** The rights under subs. (1) and
19 (2) are cumulative and may be exercised simultaneously.

20 **(4) RIGHTS OF DEBTOR AND OBLIGOR.** Except as otherwise provided in sub. (7) and
21 s. 409.605, after default, a debtor and an obligor have the rights provided in this
22 subchapter and by agreement of the parties.

1 (5) LIEN OF LEVY AFTER JUDGMENT. If a secured party has reduced its claim to
2 judgment, the lien of any levy that may be made upon the collateral by virtue of an
3 execution based upon the judgment relates back to the earliest of:

4 (a) The date of perfection of the security interest or agricultural lien in the
5 collateral;

6 (b) The date of filing a financing statement covering the collateral; or

7 (c) Any date specified in a statute under which the agricultural lien was
8 created.

9 (6) EXECUTION SALE. A sale pursuant to an execution is a foreclosure of the
10 security interest or agricultural lien by judicial procedure within the meaning of this
11 section. A secured party may purchase at the sale and thereafter hold the collateral
12 free of any other requirements of this chapter.

13 (7) CONSIGNOR OR BUYER OF CERTAIN RIGHTS TO PAYMENT. Except as otherwise
14 provided in s. 409.607 (3), this subchapter imposes no duties upon a secured party
15 that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or
16 promissory notes.

17 **409.602 Waiver and variance of rights and duties.** Except as otherwise
18 provided in s. 409.624, to the extent that they give rights to a debtor or obligor and
19 impose duties on a secured party, the debtor or obligor may not waive or vary the
20 rules stated in the following listed sections:

21 (1) Section 409.207 (2) (d) 3., which deals with use and operation of the
22 collateral by the secured party;

23 (2) Section 409.210, which deals with requests for an accounting and requests
24 concerning a list of collateral and statement of account;

1 (3) Section 409.607 (3), which deals with collection and enforcement of
2 collateral;

3 (4) Sections 409.608 (1) and 409.615 (3) to the extent that they deal with
4 application or payment of noncash proceeds of collection, enforcement, or
5 disposition;

6 (5) Sections 409.608 (1) and 409.615 (4) to the extent that they require
7 accounting for or payment of surplus proceeds of collateral;

8 (6) Section 409.609 to the extent that it imposes upon a secured party that
9 takes possession of collateral without judicial process the duty to do so without
10 breach of the peace;

11 (7) Sections 409.610 (2), 409.611, 409.613, and 409.614, which deal with
12 disposition of collateral;

13 (8) Section 409.615 (6), which deals with calculation of a deficiency or surplus
14 when a disposition is made to the secured party, a person related to the secured party,
15 or a secondary obligor;

16 (9) Section 409.616, which deals with explanation of the calculation of a
17 surplus or deficiency;

18 (10) Sections 409.620, 409.621, and 409.622, which deal with acceptance of
19 collateral in satisfaction of obligation;

20 (11) Section 409.623, which deals with redemption of collateral;

21 (12) Section 409.624, which deals with permissible waivers; and

22 (13) Sections 409.625 and 409.626, which deal with the secured party's liability
23 for failure to comply with this chapter.

24 **409.603 Agreement on standards concerning rights and duties. (1)**

25 **AGREED STANDARDS.** The parties may determine by agreement the standards

1 measuring the fulfillment of the rights of a debtor or obligor and the duties of a
2 secured party under a rule stated in s. 409.602 if the standards are not manifestly
3 unreasonable.

4 **(2) AGREED STANDARDS INAPPLICABLE TO BREACH OF PEACE.** Subsection (1) does not
5 apply to the duty under s. 409.609 to refrain from breaching the peace.

6 **409.604 Procedure if security agreement covers real property or**
7 **fixtures. (1) ENFORCEMENT: PERSONAL AND REAL PROPERTY.** If a security agreement
8 covers both personal and real property, a secured party may proceed:

9 (a) Under this subchapter as to the personal property without prejudicing any
10 rights with respect to the real property; or

11 (b) As to both the personal property and the real property in accordance with
12 the rights with respect to the real property, in which case the other provisions of this
13 subchapter do not apply.

14 **(2) ENFORCEMENT: FIXTURES.** Subject to sub. (3), if a security agreement covers
15 goods that are or become fixtures, a secured party may proceed:

16 (a) Under this subchapter; or

17 (b) In accordance with the rights with respect to real property, in which case
18 the other provisions of this subchapter do not apply.

19 **(3) REMOVAL OF FIXTURES.** Subject to the other provisions of this subchapter, if
20 a secured party holding a security interest in fixtures has priority over all owners and
21 encumbrancers of the real property, the secured party, after default, may remove the
22 collateral from the real property.

23 **(4) INJURY CAUSED BY REMOVAL.** A secured party that removes collateral shall
24 promptly reimburse any encumbrancer or owner of the real property, other than the
25 debtor, for the cost of repair of any physical injury caused by the removal. The

1 secured party need not reimburse the encumbrancer or owner for any diminution in
2 value of the real property caused by the absence of the goods removed or by any
3 necessity of replacing them. A person entitled to reimbursement may refuse
4 permission to remove until the secured party gives adequate assurance for the
5 performance of the obligation to reimburse.

6 **409.605 Unknown debtor or secondary obligor.** A secured party does not
7 owe a duty based on its status as secured party:

8 (1) To a person that is a debtor or obligor, unless the secured party knows:

9 (a) That the person is a debtor or obligor;

10 (b) The identity of the person; and

11 (c) How to communicate with the person; or

12 (2) To a secured party or lienholder that has filed a financing statement against
13 a person, unless the secured party knows:

14 (a) That the person is a debtor; and

15 (b) The identity of the person.

16 **409.606 Time of default for agricultural lien.** For purposes of this
17 subchapter, a default occurs in connection with an agricultural lien at the time the
18 secured party becomes entitled to enforce the lien in accordance with the statute
19 under which it was created.

20 **409.607 Collection and enforcement by secured party.** (1) COLLECTION
21 AND ENFORCEMENT GENERALLY. If so agreed, and in any event after default, a secured
22 party:

23 (a) May notify an account debtor or other person obligated on collateral to make
24 payment or otherwise render performance to or for the benefit of the secured party;

1 (b) May take any proceeds to which the secured party is entitled under s.
2 409.315;

3 (c) May enforce the obligations of an account debtor or other person obligated
4 on collateral and exercise the rights of the debtor with respect to the obligation of the
5 account debtor or other person obligated on collateral to make payment or otherwise
6 render performance to the debtor, and with respect to any property that secures the
7 obligations of the account debtor or other person obligated on the collateral;

8 (d) If it holds a security interest in a deposit account perfected by control under
9 s. 409.104 (1) (a), may apply the balance of the deposit account to the obligation
10 secured by the deposit account; and

11 (e) If it holds a security interest in a deposit account perfected by control under
12 s. 409.104 (1) (b) or (c), may instruct the bank to pay the balance of the deposit
13 account to or for the benefit of the secured party.

14 **(2) NONJUDICIAL ENFORCEMENT OF MORTGAGE.** If necessary to enable a secured
15 party to exercise under sub. (1) (c) the right of a debtor to enforce a mortgage
16 nonjudicially, the secured party may record in the office in which a record of the
17 mortgage is recorded:

18 (a) A copy of the security agreement that creates or provides for a security
19 interest in the obligation secured by the mortgage; and

20 (b) The secured party's sworn affidavit in recordable form stating that:

21 1. A default has occurred; and

22 2. The secured party is entitled to enforce the mortgage nonjudicially.

23 **(3) COMMERCIALY REASONABLE COLLECTION AND ENFORCEMENT.** A secured party
24 shall proceed in a commercially reasonable manner if the secured party:

1 (a) Undertakes to collect from or enforce an obligation of an account debtor or
2 other person obligated on collateral; and

3 (b) Is entitled to charge back uncollected collateral or otherwise to full or
4 limited recourse against the debtor or a secondary obligor.

5 (4) EXPENSES OF COLLECTION AND ENFORCEMENT. A secured party may deduct
6 from the collections made pursuant to sub. (3) reasonable expenses of collection and
7 enforcement, including reasonable attorney fees and legal expenses incurred by the
8 secured party.

9 (5) DUTIES TO SECURED PARTY NOT AFFECTED. This section does not determine
10 whether an account debtor, bank, or other person obligated on collateral owes a duty
11 to a secured party.

12 **409.608 Application of proceeds of collection or enforcement; liability**
13 **for deficiency and right to surplus. (1) APPLICATION OF PROCEEDS, SURPLUS, AND**
14 **DEFICIENCY IF OBLIGATION SECURED.** If a security interest or agricultural lien secures
15 payment or performance of an obligation, the following rules apply:

16 (a) A secured party shall apply or pay over for application the cash proceeds of
17 collection or enforcement under s. 409.607 in the following order to:

18 1. The reasonable expenses of collection and enforcement and, to the extent
19 provided for by agreement and not prohibited by law, reasonable attorney fees and
20 legal expenses incurred by the secured party;

21 2. The satisfaction of obligations secured by the security interest or
22 agricultural lien under which the collection or enforcement is made; and

23 3. The satisfaction of obligations secured by any subordinate security interest
24 in or other lien on the collateral subject to the security interest or agricultural lien

1 under which the collection or enforcement is made if the secured party receives an
2 authenticated demand for proceeds before distribution of the proceeds is completed.

3 (b) If requested by a secured party, a holder of a subordinate security interest
4 or other lien shall furnish reasonable proof of the interest or lien within a reasonable
5 time. Unless the holder complies, the secured party need not comply with the
6 holder's demand under par. (a) 3.

7 (c) A secured party need not apply or pay over for application noncash proceeds
8 of collection and enforcement under s. 409.607 unless the failure to do so would be
9 commercially unreasonable. A secured party that applies or pays over for application
10 noncash proceeds shall do so in a commercially reasonable manner.

11 (d) A secured party shall account to and pay a debtor for any surplus, and the
12 obligor is liable for any deficiency.

13 (2) NO SURPLUS OR DEFICIENCY IN SALES OF CERTAIN RIGHTS TO PAYMENT. If the
14 underlying transaction is a sale of accounts, chattel paper, payment intangibles, or
15 promissory notes, the debtor is not entitled to any surplus, and the obligor is not
16 liable for any deficiency.

17 **409.609 Secured party's right to take possession after default. (1)**
18 POSSESSION; RENDERING EQUIPMENT UNUSABLE; DISPOSITION ON DEBTOR'S PREMISES. After
19 default, a secured party:

20 (a) May take possession of the collateral; and

21 (b) Without removal, may render equipment unusable and dispose of collateral
22 on a debtor's premises under s. 409.610.

23 (2) JUDICIAL AND NONJUDICIAL PROCESS. A secured party may proceed under sub.
24 (1):

25 (a) Pursuant to judicial process; or

1 (b) Without judicial process, if it proceeds without breach of the peace.

2 (3) ASSEMBLY OF COLLATERAL. If so agreed, and in any event after default, a
3 secured party may require the debtor to assemble the collateral and make it
4 available to the secured party at a place to be designated by the secured party which
5 is reasonably convenient to both parties.

6 **409.610 Disposition of collateral after default.** (1) DISPOSITION AFTER
7 DEFAULT. After default, a secured party may sell, lease, license, or otherwise dispose
8 of any or all of the collateral in its present condition or following any commercially
9 reasonable preparation or processing.

10 (2) COMMERCIALY REASONABLE DISPOSITION. Every aspect of a disposition of
11 collateral, including the method, manner, time, place, and other terms, must be
12 commercially reasonable. If commercially reasonable, a secured party may dispose
13 of collateral by public or private proceedings, by one or more contracts, as a unit or
14 in parcels, and at any time and place and on any terms.

15 (3) PURCHASE BY SECURED PARTY. A secured party may purchase collateral:

16 (a) At a public disposition; or

17 (b) At a private disposition only if the collateral is of a kind that is customarily
18 sold on a recognized market or the subject of widely distributed standard price
19 quotations.

20 (4) WARRANTIES ON DISPOSITION. A contract for sale, lease, license, or other
21 disposition includes the warranties relating to title, possession, quiet enjoyment,
22 and the like which by operation of law accompany a voluntary disposition of property
23 of the kind subject to the contract.

24 (5) DISCLAIMER OF WARRANTIES. A secured party may disclaim or modify
25 warranties under sub. (4):

1 (a) In a manner that would be effective to disclaim or modify the warranties in
2 a voluntary disposition of property of the kind subject to the contract of disposition;
3 or

4 (b) By communicating to the purchaser a record evidencing the contract for
5 disposition and including an express disclaimer or modification of the warranties.

6 **(6) RECORD SUFFICIENT TO DISCLAIM WARRANTIES.** A record is sufficient to disclaim
7 warranties under sub. (5) if it indicates “There is no warranty relating to title,
8 possession, quiet enjoyment, or the like in this disposition” or uses words of similar
9 import.

10 **409.611 Notification before disposition of collateral. (1) NOTIFICATION**
11 **DATE.** In this section, “notification date” means the earlier of the date on which:

12 (a) A secured party sends to the debtor and any secondary obligor an
13 authenticated notification of disposition; or

14 (b) The debtor and any secondary obligor waive the right to notification.

15 **(2) NOTIFICATION OF DISPOSITION REQUIRED.** Except as otherwise provided in sub.
16 (4), a secured party that disposes of collateral under s. 409.610 shall send to the
17 persons specified in sub. (3) a reasonable, authenticated notification of disposition.

18 **(3) PERSONS TO BE NOTIFIED.** To comply with sub. (2), the secured party shall
19 send an authenticated notification of disposition to:

20 (a) The debtor;

21 (b) Any secondary obligor; and

22 (c) If the collateral is other than consumer goods:

23 1. Any other person from which the secured party has received, before the
24 notification date, an authenticated notification of a claim of an interest in the
25 collateral;

1 2. Any other secured party or lienholder that, 10 days before the notification
2 date, held a security interest in or other lien on the collateral perfected by the filing
3 of a financing statement that:

- 4 a. Identified the collateral;
- 5 b. Was indexed under the debtor's name as of that date; and
- 6 c. Was filed in the office in which to file a financing statement against the debtor
7 covering the collateral as of that date; and

8 3. Any other secured party that, 10 days before the notification date, held a
9 security interest in the collateral perfected by compliance with a statute, regulation,
10 or treaty described in s. 409.311 (1).

11 **(4) SUBSECTION (2) INAPPLICABLE: PERISHABLE COLLATERAL; RECOGNIZED MARKET.**
12 Subsection (2) does not apply if the collateral is perishable or threatens to decline
13 speedily in value or is of a type customarily sold on a recognized market.

14 **(5) COMPLIANCE WITH SUB. (3) (C) 2.** A secured party complies with the
15 requirement for notification prescribed by sub. (3) (c) 2. if:

16 (a) Not later than 20 days or earlier than 30 days before the notification date,
17 the secured party requests, in a commercially reasonable manner, information
18 concerning financing statements indexed under the debtor's name in the office
19 indicated in sub. (3) (c) 2.; and

- 20 (b) Before the notification date, the secured party:
- 21 1. Did not receive a response to the request for information; or
- 22 2. Received a response to the request for information and sent an authenticated
23 notification of disposition to each secured party or other lienholder named in that
24 response whose financing statement covered the collateral.

1 **409.612 Timeliness of notification before disposition of collateral. (1)**

2 REASONABLE TIME IS QUESTION OF FACT. Except as otherwise provided in sub. (2),
3 whether a notification is sent within a reasonable time is a question of fact.

4 **(2) TEN-DAY PERIOD SUFFICIENT IN NONCONSUMER TRANSACTION.** In a transaction
5 other than a consumer transaction, a notification of disposition sent after default and
6 10 days or more before the earliest time of disposition set forth in the notification is
7 sent within a reasonable time before the disposition.

8 **409.613 Contents and form of notification before disposition of**
9 **collateral: general.** Except in a consumer–goods transaction, the following rules
10 apply:

11 **(1) NOTIFICATION: WHEN SUFFICIENT.** The contents of a notification of disposition
12 are sufficient if the notification:

13 (a) Describes the debtor and the secured party;

14 (b) Describes the collateral that is the subject of the intended disposition;

15 (c) States the method of intended disposition;

16 (d) States that the debtor is entitled to an accounting of the unpaid
17 indebtedness and states the charge, if any, for an accounting; and

18 (e) States the time and place of a public disposition or the time after which any
19 other disposition is to be made.

20 **(2) NOTIFICATION: QUESTION OF FACT.** Whether the contents of a notification that
21 lacks any of the information specified in sub. (1) are nevertheless sufficient is a
22 question of fact.

23 **(3) NOTIFICATION: OTHER INFORMATION OR MINOR ERRORS.** The contents of a
24 notification providing substantially the information specified in sub. (1) are
25 sufficient, even if the notification includes:

1 (a) Information not specified by sub. (1); or

2 (b) Minor errors that are not seriously misleading.

3 (4) SUBSTANTIAL COMPLIANCE. A particular phrasing of the notification is not
4 required.

5 (5) NOTIFICATION: FORM SUFFICIENT. The following form of notification and the
6 form appearing in s. 409.614 (3), when completed, each provide sufficient
7 information:

8 **NOTIFICATION OF DISPOSITION**

9 **OF COLLATERAL**

10 To: [*Name of debtor, obligor, or other person to which the notification is sent*]

11 From: [*Name, address, and telephone number of secured party*]

12 Name of Debtor(s): [*Include only if debtor(s) are not an addressee*]

13 [*For a public disposition*]:

14 We will sell [or lease or license, as *applicable*] the [*describe collateral*] [to the
15 highest qualified bidder] in public as follows:

16 Day and Date:

17 Time:

18 Place:

19 [*For a private disposition*]:

20 We will sell [or lease or license, as *applicable*] the [*describe collateral*]
21 privately sometime after [*day and date*].

22 You are entitled to an accounting of the unpaid indebtedness secured by the
23 property that we intend to sell [or lease or license, as *applicable*] [for a charge of \$
....]. You may request an accounting by calling us at [*telephone number*].

1 **409.614 Contents and form of notification before disposition of**
2 **collateral: consumer-goods transaction.** In a consumer-goods transaction, the
3 following rules apply:

4 (1) NOTIFICATION OF DISPOSITION. A notification of disposition must provide the
5 following information:

6 (a) The information specified in s. 409.613 (1);

7 (b) A description of any liability for a deficiency of the person to which the
8 notification is sent;

9 (c) A telephone number from which the amount that must be paid to the secured
10 party to redeem the collateral under s. 409.623 is available; and

11 (d) A telephone number or mailing address from which additional information
12 concerning the disposition and the obligation secured is available.

13 (2) SUBSTANTIAL COMPLIANCE. A particular phrasing of the notification is not
14 required.

15 (3) NOTIFICATION: FORM SUFFICIENT. The following form of notification, when
16 completed, provides sufficient information:

17 [Name and address of secured party]

18 [Date]

19 **NOTICE OF OUR PLAN**

20 **TO SELL PROPERTY**

21 ... *[Name and address of any obligor who is also a debtor]*

22 Subject: ... *[Identification of transaction]*

23 We have your ... *[describe collateral]*, because you broke promises in our
24 agreement.

25 *[For a public disposition]:*

1 We will sell [*describe collateral*] at public sale. A sale could include a lease
2 or license. The sale will be held as follows:

3 Date:

4 Time:

5 Place:

6 You may attend the sale and bring bidders if you want.

7 [*For a private disposition*]:

8 We will sell [*describe collateral*] at private sale sometime after [*date*]. A
9 sale could include a lease or license.

10 The money that we get from the sale (after paying our costs) will reduce the
11 amount you owe. If we get less money than you owe, you [*will or will not, as*
12 *applicable*] still owe us the difference. If we get more money than you owe, you will
13 get the extra money, unless we must pay it to someone else.

14 You can get the property back at any time before we sell it by paying us the full
15 amount you owe (not just the past-due payments), including our expenses. To learn
16 the exact amount you must pay, call us at [*telephone number*].

17 If you want us to explain to you in writing how we have figured the amount that
18 you owe us, you may call us at [*telephone number*] [or write us at [*secured*
19 *party's address*]] and request a written explanation. [We will charge you \$.... for the
20 explanation if we sent you another written explanation of the amount you owe us
21 within the last 6 months.]

22 If you need more information about the sale, call us at [*telephone number*]]
23 [or write us at [*secured party's address*]].

24 We are sending this notice to the following other people who have an interest
25 in [*describe collateral*] or who owe money under your agreement:

1 [*Names of all other debtors and obligors, if any*]

2 **[End of Form]**

3 **(4) NOTIFICATION: OTHER INFORMATION.** A notification in the form of sub. (3) is
4 sufficient, even if additional information appears at the end of the form.

5 **(5) NOTIFICATION: ERRORS.** A notification in the form of sub. (3) is sufficient, even
6 if it includes errors in information not required by sub. (1), unless the error is
7 misleading with respect to rights arising under this chapter.

8 **(6) NOTIFICATION: NOT IN FORM.** If a notification under this section is not in the
9 form of sub. (3), law other than this chapter determines the effect of including
10 information not required by sub. (1).

11 **409.615 Application of proceeds of disposition; liability for deficiency**
12 **and right to surplus. (1) APPLICATION OF PROCEEDS.** A secured party shall apply
13 or pay over for application the cash proceeds of disposition under s. 409.610 in the
14 following order to:

15 (a) The reasonable expenses of retaking, holding, preparing for disposition,
16 processing, and disposing of, and, to the extent provided for by agreement and not
17 prohibited by law, reasonable attorney fees and legal expenses incurred by the
18 secured party;

19 (b) The satisfaction of obligations secured by the security interest or
20 agricultural lien under which the disposition is made;

21 (c) The satisfaction of obligations secured by any subordinate security interest
22 in or other subordinate lien on the collateral if:

23 1. The secured party receives from the holder of the subordinate security
24 interest or other lien an authenticated demand for proceeds before distribution of the
25 proceeds is completed; and

1 2. In a case in which a consignor has an interest in the collateral, the
2 subordinate security interest or other lien is senior to the interest of the consignor;
3 and

4 (d) A secured party that is a consignor of the collateral if the secured party
5 receives from the consignor an authenticated demand for proceeds before
6 distribution of the proceeds is completed.

7 **(2) PROOF OF SUBORDINATE INTEREST.** If requested by a secured party, a holder
8 of a subordinate security interest or other lien shall furnish reasonable proof of the
9 interest or lien within a reasonable time. Unless the holder does so, the secured party
10 need not comply with the holder's demand under sub. (1) (c).

11 **(3) APPLICATION OF NONCASH PROCEEDS.** A secured party need not apply or pay
12 over for application noncash proceeds of disposition under s. 409.610 unless the
13 failure to do so would be commercially unreasonable. A secured party that applies
14 or pays over for application noncash proceeds shall do so in a commercially
15 reasonable manner.

16 **(4) SURPLUS OR DEFICIENCY IF OBLIGATION SECURED.** If the security interest under
17 which a disposition is made secures payment or performance of an obligation, after
18 making the payments and applications required by sub. (1) and permitted by sub. (3):

19 (a) Unless sub. (1) (d) requires the secured party to apply or pay over cash
20 proceeds to a consignor, the secured party shall account to and pay a debtor for any
21 surplus; and

22 (b) The obligor is liable for any deficiency.

23 **(5) NO SURPLUS OR DEFICIENCY IN SALES OF CERTAIN RIGHTS TO PAYMENT.** If the
24 underlying transaction is a sale of accounts, chattel paper, payment intangibles, or
25 promissory notes:

1 (a) The debtor is not entitled to any surplus; and

2 (b) The obligor is not liable for any deficiency.

3 (6) CALCULATION OF SURPLUS OR DEFICIENCY IN DISPOSITION TO PERSON RELATED TO
4 SECURED PARTY. The surplus or deficiency following a disposition is calculated based
5 on the amount of proceeds that would have been realized in a disposition complying
6 with this subchapter to a transferee other than the secured party, a person related
7 to the secured party or a secondary obligor if:

8 (a) The transferee in the disposition is the secured party, a person related to
9 the secured party, or a secondary obligor; and

10 (b) The amount of proceeds of the disposition is significantly below the range
11 of proceeds that a complying disposition to a person other than the secured party, a
12 person related to the secured party, or a secondary obligor would have brought.

13 (7) CASH PROCEEDS RECEIVED BY JUNIOR SECURED PARTY. A secured party that
14 receives cash proceeds of a disposition in good faith and without knowledge that the
15 receipt violates the rights of the holder of a security interest or other lien that is not
16 subordinate to the security interest or agricultural lien under which the disposition
17 is made:

18 (a) Takes the cash proceeds free of the security interest or other lien;

19 (b) Is not obligated to apply the proceeds of the disposition to the satisfaction
20 of obligations secured by the security interest or other lien; and

21 (c) Is not obligated to account to or pay the holder of the security interest or
22 other lien for any surplus.

23 **409.616 Explanation of calculation of surplus or deficiency. (1)**

24 DEFINITIONS. In this section:

25 (a) “Explanation” means a writing that:

- 1 1. States the amount of the surplus or deficiency;
- 2 2. Provides an explanation in accordance with sub. (3) of how the secured party
- 3 calculated the surplus or deficiency;
- 4 3. States, if applicable, that future debits, credits, charges, including additional
- 5 credit service charges or interest, rebates, and expenses may affect the amount of the
- 6 surplus or deficiency; and
- 7 4. Provides a telephone number or mailing address from which additional
- 8 information concerning the transaction is available.

9 (b) "Request" means a record:

- 10 1. Authenticated by a debtor or consumer obligor;
- 11 2. Requesting that the recipient provide an explanation; and
- 12 3. Sent after disposition of the collateral under s. 409.610.

13 **(2) EXPLANATION OF CALCULATION.** In a consumer-goods transaction in which
14 the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under
15 s. 409.615, the secured party shall:

16 (a) Send an explanation to the debtor or consumer obligor, as applicable, after
17 the disposition and:

18 1. Before or when the secured party accounts to the debtor and pays any surplus
19 or first makes written demand on the consumer obligor after the disposition for
20 payment of the deficiency; and

21 2. Within 14 days after receipt of a request; or

22 (b) In the case of a consumer obligor who is liable for a deficiency, within 14 days
23 after receipt of a request, send to the consumer obligor a record waiving the secured
24 party's right to a deficiency.

1 **(3) REQUIRED INFORMATION.** To comply with sub. (1) (a) 2., a writing must provide
2 the following information in the following order:

3 (a) The aggregate amount of obligations secured by the security interest under
4 which the disposition was made, and, if the amount reflects a rebate of unearned
5 interest or credit service charge, an indication of that fact, calculated as of a specified
6 date:

7 1. If the secured party takes or receives possession of the collateral after
8 default, not more than 35 days before the secured party takes or receives possession;
9 or

10 2. If the secured party takes or receives possession of the collateral before
11 default or does not take possession of the collateral, not more than 35 days before the
12 disposition;

13 (b) The amount of proceeds of the disposition;

14 (c) The aggregate amount of the obligations after deducting the amount of
15 proceeds;

16 (d) The amount, in the aggregate or by type, and types of expenses, including
17 expenses of retaking, holding, preparing for disposition, processing, and disposing
18 of the collateral, and attorney fees secured by the collateral which are known to the
19 secured party and relate to the current disposition;

20 (e) The amount, in the aggregate or by type, and types of credits, including
21 rebates of interest or credit service charges, to which the obligor is known to be
22 entitled and which are not reflected in the amount in par. (a); and

23 (f) The amount of the surplus or deficiency.

1 (4) SUBSTANTIAL COMPLIANCE. A particular phrasing of the explanation is not
2 required. An explanation complying substantially with the requirements of sub. (1)
3 is sufficient, even if it includes minor errors that are not seriously misleading.

4 (5) CHARGES FOR RESPONSES. A debtor or consumer obligor is entitled without
5 charge to one response to a request under this section during any 6-month period in
6 which the secured party did not send to the debtor or consumer obligor an
7 explanation pursuant to sub. (2) (a). The secured party may require payment of a
8 charge not exceeding \$25 for each additional response.

9 **409.617 Rights of transferee of collateral. (1) EFFECTS OF DISPOSITION.** A
10 secured party's disposition of collateral after default:

- 11 (a) Transfers to a transferee for value all of the debtor's rights in the collateral;
12 (b) Discharges the security interest under which the disposition is made; and
13 (c) Discharges any subordinate security interest or other subordinate lien other
14 than liens held by this state or a local governmental unit, as defined in s. 19.42 (7u).

 ****NOTE: "held by this state or a local governmental unit, as defined
in s. 19.42 (7u)" is inserted in the brackets.

15 (2) RIGHTS OF GOOD-FAITH TRANSFEREE. A transferee that acts in good faith takes
16 free of the rights and interests described in sub. (1), even if the secured party fails
17 to comply with this chapter or the requirements of any judicial proceeding.

18 (3) RIGHTS OF OTHER TRANSFEREE. If a transferee does not take free of the rights
19 and interests described in sub. (1), the transferee takes the collateral subject to:

- 20 (a) The debtor's rights in the collateral;
21 (b) The security interest or agricultural lien under which the disposition is
22 made; and
23 (c) Any other security interest or other lien.

1 **409.618 Rights and duties of certain secondary obligors.** (1) RIGHTS AND
2 DUTIES OF SECONDARY OBLIGOR. A secondary obligor acquires the rights and becomes
3 obligated to perform the duties of the secured party after the secondary obligor:

4 (a) Receives an assignment of a secured obligation from the secured party;

5 (b) Receives a transfer of collateral from the secured party and agrees to accept
6 the rights and assume the duties of the secured party; or

7 (c) Is subrogated to the rights of a secured party with respect to collateral.

8 **(2) EFFECT OF ASSIGNMENT, TRANSFER, OR SUBROGATION.** An assignment, transfer,
9 or subrogation described in sub. (1):

10 (a) Is not a disposition of collateral under s. 409.610; and

11 (b) Relieves the secured party of further duties under this chapter.

12 **409.619 Transfer of record or legal title.** (1) TRANSFER STATEMENT. In this
13 section, “transfer statement” means a record authenticated by a secured party
14 stating:

15 (a) That the debtor has defaulted in connection with an obligation secured by
16 specified collateral;

17 (b) That the secured party has exercised its postdefault remedies with respect
18 to the collateral;

19 (c) That, by reason of the exercise, a transferee has acquired the rights of the
20 debtor in the collateral; and

21 (d) The name and mailing address of the secured party, debtor, and transferee.

22 **(2) EFFECT OF TRANSFER STATEMENT.** A transfer statement entitles the transferee
23 to the transfer of record of all rights of the debtor in the collateral specified in the
24 statement in any official filing, recording, registration, or certificate-of-title system
25 covering the collateral. If a transfer statement is presented with the applicable fee

1 and request form to the official or office responsible for maintaining the system, the
2 official or office shall:

3 (a) Accept the transfer statement;

4 (b) Promptly amend its records to reflect the transfer; and

5 (c) If applicable, issue a new appropriate certificate of title in the name of the
6 transferee.

7 **(3) TRANSFER NOT A DISPOSITION; NO RELIEF OF SECURED PARTY'S DUTIES.** A transfer
8 of the record or legal title to collateral to a secured party under sub. (2) or otherwise
9 is not of itself a disposition of collateral under this chapter and does not of itself
10 relieve the secured party of its duties under this chapter.

11 **409.620 Acceptance of collateral in full or partial satisfaction of**
12 **obligation; compulsory disposition of collateral. (1) CONDITIONS TO**
13 **ACCEPTANCE IN SATISFACTION.** Except as otherwise provided in sub. (7), a secured party
14 may accept collateral in full or partial satisfaction of the obligation it secures only
15 if:

16 (a) The debtor consents to the acceptance under sub. (3);

17 (b) The secured party does not receive, within the time set forth in sub. (4), a
18 notification of objection to the proposal authenticated by:

19 1. A person to which the secured party was required to send a proposal under
20 s. 409.621; or

21 2. Any other person, other than the debtor, holding an interest in the collateral
22 subordinate to the security interest that is the subject of the proposal;

23 (c) If the collateral is consumer goods, the collateral is not in the possession of
24 the debtor when the debtor consents to the acceptance; and

1 (d) Subsection (5) does not require the secured party to dispose of the collateral
2 or the debtor waives the requirement pursuant to s. 409.624.

3 **(2) PURPORTED ACCEPTANCE INEFFECTIVE.** A purported or apparent acceptance
4 of collateral under this section is ineffective unless:

5 (a) The secured party consents to the acceptance in an authenticated record or
6 sends a proposal to the debtor; and

7 (b) The conditions of sub. (1) are met.

8 **(3) DEBTOR'S CONSENT.** For purposes of this section:

9 (a) A debtor consents to an acceptance of collateral in partial satisfaction of the
10 obligation it secures only if the debtor agrees to the terms of the acceptance in a
11 record authenticated after default; and

12 (b) A debtor consents to an acceptance of collateral in full satisfaction of the
13 obligation it secures only if the debtor agrees to the terms of the acceptance in a
14 record authenticated after default or the secured party:

15 1. Sends to the debtor after default a proposal that is unconditional or subject
16 only to a condition that collateral not in the possession of the secured party be
17 preserved or maintained;

18 2. In the proposal, proposes to accept collateral in full satisfaction of the
19 obligation it secures; and

20 3. Does not receive a notification of objection authenticated by the debtor
21 within 20 days after the proposal is sent.

22 **(4) EFFECTIVENESS OF NOTIFICATION.** To be effective under sub. (1) (b), a
23 notification of objection must be received by the secured party:

24 (a) In the case of a person to which the proposal was sent pursuant to s. 409.621,
25 within 20 days after notification was sent to that person; and

1 (b) In other cases:

2 1. Within 20 days after the last notification was sent pursuant to s. 409.621;

3 or

4 2. If a notification was not sent, before the debtor consents to the acceptance
5 under sub. (3).

6 (5) MANDATORY DISPOSITION OF CONSUMER GOODS. A secured party that has taken
7 possession of collateral shall dispose of the collateral pursuant to s. 409.610 within
8 the time specified in sub. (6) if:

9 (a) Sixty percent of the cash price has been paid in the case of a
10 purchase-money security interest in consumer goods; or

11 (b) Sixty percent of the principal amount of the obligation secured has been paid
12 in the case of a nonpurchase-money security interest in consumer goods.

13 (6) COMPLIANCE WITH MANDATORY DISPOSITION REQUIREMENT. To comply with sub.
14 (5), the secured party shall dispose of the collateral:

15 (a) Within 90 days after taking possession; or

16 (b) Within any longer period to which the debtor and all secondary obligors
17 have agreed in an agreement to that effect entered into and authenticated after
18 default.

19 (7) NO PARTIAL SATISFACTION IN CONSUMER TRANSACTION. In a consumer
20 transaction, a secured party may not accept collateral in partial satisfaction of the
21 obligation it secures.

22 **409.621 Notification of proposal to accept collateral.** (1) PERSONS TO
23 WHICH PROPOSAL TO BE SENT. A secured party that desires to accept collateral in full
24 or partial satisfaction of the obligation it secures shall send its proposal to:

1 (a) Any person from which the secured party has received, before the debtor
2 consented to the acceptance, an authenticated notification of a claim of an interest
3 in the collateral;

4 (b) Any other secured party or lienholder that, 10 days before the debtor
5 consented to the acceptance, held a security interest in or other lien on the collateral
6 perfected by the filing of a financing statement that:

7 1. Identified the collateral;

8 2. Was indexed under the debtor's name as of that date; and

9 3. Was filed in the office or offices in which to file a financing statement against
10 the debtor covering the collateral as of that date; and

11 (c) Any other secured party that, 10 days before the debtor consented to the
12 acceptance, held a security interest in the collateral perfected by compliance with a
13 statute, regulation, or treaty described in s. 409.311 (1).

14 **(2) PROPOSAL TO BE SENT TO SECONDARY OBLIGOR IN PARTIAL SATISFACTION.** A
15 secured party that desires to accept collateral in partial satisfaction of the obligation
16 it secures shall send its proposal to any secondary obligor in addition to the persons
17 described in sub. (1).

18 **409.622 Effect of acceptance of collateral. (1) EFFECT OF ACCEPTANCE.** A
19 secured party's acceptance of collateral in full or partial satisfaction of the obligation
20 it secures:

21 (a) Discharges the obligation to the extent consented to by the debtor;

22 (b) Transfers to the secured party all of a debtor's rights in the collateral;

23 (c) Discharges the security interest or agricultural lien that is the subject of the
24 debtor's consent and any subordinate security interest or other subordinate lien; and

25 (d) Terminates any other subordinate interest.

1 **(2) DISCHARGE OF SUBORDINATE INTEREST NOTWITHSTANDING NONCOMPLIANCE.** A
2 subordinate interest is discharged or terminated under sub. (1), even if the secured
3 party fails to comply with this chapter.

4 **409.623 Right to redeem collateral. (1) PERSONS THAT MAY REDEEM.** A
5 debtor, any secondary obligor, or any other secured party or lienholder may redeem
6 collateral.

7 **(2) REQUIREMENTS FOR REDEMPTION.** To redeem collateral, a person shall tender:

8 (a) Fulfillment of all obligations secured by the collateral; and

9 (b) The reasonable expenses and attorney fees described in s. 409.615 (1) (a).

10 **(3) WHEN REDEMPTION MAY OCCUR.** A redemption may occur at any time before
11 a secured party:

12 (a) Has collected collateral under s. 409.607;

13 (b) Has disposed of collateral or entered into a contract for its disposition under
14 s. 409.610; or

15 (c) Has accepted collateral in full or partial satisfaction of the obligation it
16 secures under s. 409.622.

17 **409.624 Waiver. (1) WAIVER OF DISPOSITION NOTIFICATION.** A debtor or
18 secondary obligor may waive the right to notification of disposition of collateral
19 under s. 409.611 only by an agreement to that effect entered into and authenticated
20 after default.

21 **(2) WAIVER OF MANDATORY DISPOSITION.** A debtor may waive the right to require
22 disposition of collateral under s. 409.620 (5) only by an agreement to that effect
23 entered into and authenticated after default.

1 **(3) WAIVER OF REDEMPTION RIGHT.** Except in a consumer–goods transaction, a
2 debtor or secondary obligor may waive the right to redeem collateral under s. 409.623
3 only by an agreement to that effect entered into and authenticated after default.

4 **409.625 Remedies for secured party’s failure to comply with chapter.**

5 **(1) JUDICIAL ORDERS CONCERNING NONCOMPLIANCE.** If it is established that a secured
6 party is not proceeding in accordance with this chapter, a court may order or restrain
7 collection, enforcement, or disposition of collateral on appropriate terms and
8 conditions.

9 **(2) DAMAGES FOR NONCOMPLIANCE.** Subject to subs. (3), (4), and (6), a person is
10 liable for damages in the amount of any loss caused by a failure to comply with this
11 chapter. Loss caused by a failure to comply may include loss resulting from the
12 debtor’s inability to obtain, or increased costs of, alternative financing.

13 **(3) PERSONS ENTITLED TO RECOVER DAMAGES; STATUTORY DAMAGES IN**
14 **CONSUMER–GOODS TRANSACTION.** Except as otherwise provided in s. 409.628:

15 (a) A person that, at the time of the failure, was a debtor, was an obligor, or held
16 a security interest in or other lien on the collateral may recover damages under sub.

17 (2) for its loss; and

18 (b) If the collateral is consumer goods, a person that was a debtor or a secondary
19 obligor at the time a secured party failed to comply with this subchapter may recover
20 for that failure in any event an amount not less than the credit service charge plus
21 10% of the principal amount of the obligation or the time–price differential plus 10%
22 of the cash price.

23 **(4) RECOVERY WHEN DEFICIENCY ELIMINATED OR REDUCED.** A debtor whose
24 deficiency is eliminated under s. 409.626 may recover damages for the loss of any
25 surplus. However, a debtor or secondary obligor whose deficiency is eliminated or

1 reduced under s. 409.626 may not otherwise recover under sub. (2) for noncompliance
2 with the provisions of this subchapter relating to collection, enforcement,
3 disposition, or acceptance.

4 (5) STATUTORY DAMAGES: NONCOMPLIANCE WITH SPECIFIED PROVISIONS. In addition
5 to any damages recoverable under sub. (2), the debtor, consumer obligor, or person
6 named as a debtor in a filed record, as applicable, may recover \$500 in each case from
7 a person that:

8 (a) Fails to comply with s. 409.208;

9 (b) Fails to comply with s. 409.209;

10 (c) Files a record that the person is not entitled to file under s. 409.509 (1);

11 (d) Fails to cause the secured party of record to file or send a termination
12 statement as required by s. 409.513 (1) or (3);

13 (e) Fails to comply with s. 409.616 (2) (a) and whose failure is part of a pattern,
14 or consistent with a practice, of noncompliance; or

15 (f) Fails to comply with s. 409.616 (2) (b).

16 (6) STATUTORY DAMAGES: NONCOMPLIANCE WITH S. 409.210. A debtor or consumer
17 obligor may recover damages under sub. (2) and, in addition, \$500 in each case from
18 a person that, without reasonable cause, fails to comply with a request under s.
19 409.210. A recipient of a request under s. 409.210 which never claimed an interest
20 in the collateral or obligations that are the subject of a request under that section has
21 a reasonable excuse for failure to comply with the request within the meaning of this
22 subsection.

23 (7) LIMITATION OF SECURITY INTEREST: NONCOMPLIANCE WITH S. 409.210. If a secured
24 party fails to comply with a request regarding a list of collateral or a statement of
25 account under s. 409.210, the secured party may claim a security interest only as

1 shown in the list or statement included in the request as against a person that is
2 reasonably misled by the failure.

3 **409.626 Action in which deficiency or surplus is in issue. (1) APPLICABLE**
4 **RULES IF AMOUNT OF DEFICIENCY OR SURPLUS IN ISSUE.** In an action arising from a
5 transaction, other than a consumer transaction, in which the amount of a deficiency
6 or surplus is in issue, the following rules apply:

7 (a) A secured party need not prove compliance with the provisions of this
8 subchapter relating to collection, enforcement, disposition, or acceptance unless the
9 debtor or a secondary obligor places the secured party's compliance in issue.

10 (b) If the secured party's compliance is placed in issue, the secured party has
11 the burden of establishing that the collection, enforcement, disposition, or
12 acceptance was conducted in accordance with this subchapter.

13 (c) Except as otherwise provided in s. 409.628, if a secured party fails to prove
14 that the collection, enforcement, disposition, or acceptance was conducted in
15 accordance with the provisions of this subchapter relating to collection, enforcement,
16 disposition, or acceptance, the liability of a debtor or a secondary obligor for a
17 deficiency is limited to an amount by which the sum of the secured obligation,
18 expenses, and attorney fees exceeds the greater of:

19 1. The proceeds of the collection, enforcement, disposition, or acceptance; or
20 2. The amount of proceeds that would have been realized had the noncomplying
21 secured party proceeded in accordance with the provisions of this subchapter
22 relating to collection, enforcement, disposition, or acceptance.

23 (d) For purposes of par. (c) 2., the amount of proceeds that would have been
24 realized is equal to the sum of the secured obligation, expenses, and attorney fees
25 unless the secured party proves that the amount is less than that sum.

1 (e) If a deficiency or surplus is calculated under s. 409.615 (6), the debtor or
2 obligor has the burden of establishing that the amount of proceeds of the disposition
3 is significantly below the range of prices that a complying disposition to a person
4 other than the secured party, a person related to the secured party, or a secondary
5 obligor would have brought.

6 (2) NONCONSUMER TRANSACTIONS; NO INFERENCE. The limitation of the rules in
7 sub. (1) to transactions other than consumer transactions is intended to leave to the
8 court the determination of the proper rules in consumer transactions. The court may
9 not infer from that limitation the nature of the proper rule in consumer transactions
10 and may continue to apply established approaches.

11 **409.627 Determination of whether conduct was commercially**
12 **reasonable.** (1) GREATER AMOUNT OBTAINABLE UNDER OTHER CIRCUMSTANCES; NO
13 PRECLUSION OF COMMERCIAL REASONABLENESS. The fact that a greater amount could
14 have been obtained by a collection, enforcement, disposition, or acceptance at a
15 different time or in a different method from that selected by the secured party is not
16 of itself sufficient to preclude the secured party from establishing that the collection,
17 enforcement, disposition, or acceptance was made in a commercially reasonable
18 manner.

19 (2) DISPOSITIONS THAT ARE COMMERCIALY REASONABLE. A disposition of collateral
20 is made in a commercially reasonable manner if the disposition is made:

21 (a) In the usual manner on any recognized market;

22 (b) At the price current in any recognized market at the time of the disposition;

23 or

24 (c) Otherwise in conformity with reasonable commercial practices among
25 dealers in the type of property that was the subject of the disposition.

1 **(3) APPROVAL BY COURT OR ON BEHALF OF CREDITORS.** A collection, enforcement,
2 disposition, or acceptance is commercially reasonable if it has been approved:

- 3 (a) In a judicial proceeding;
4 (b) By a bona fide creditors' committee;
5 (c) By a representative of creditors; or
6 (d) By an assignee for the benefit of creditors.

7 **(4) APPROVAL UNDER SUB. (3) NOT NECESSARY; ABSENCE OF APPROVAL HAS NO EFFECT.**
8 Approval under sub. (3) need not be obtained, and lack of approval does not mean
9 that the collection, enforcement, disposition, or acceptance is not commercially
10 reasonable.

11 **409.628 Nonliability and limitation on liability of secured party;**
12 **liability of secondary obligor. (1) LIMITATION OF LIABILITY OF SECURED PARTY FOR**
13 **NONCOMPLIANCE WITH CHAPTER.** Unless a secured party knows that a person is a debtor
14 or obligor, knows the identity of the person, and knows how to communicate with the
15 person:

16 (a) The secured party is not liable to the person, or to a secured party or
17 lienholder that has filed a financing statement against the person, for failure to
18 comply with this chapter; and

19 (b) The secured party's failure to comply with this chapter does not affect the
20 liability of the person for a deficiency.

21 **(2) LIMITATION OF LIABILITY BASED ON STATUS AS SECURED PARTY.** A secured party
22 is not liable because of its status as secured party:

- 23 (a) To a person that is a debtor or obligor, unless the secured party knows:
24 1. That the person is a debtor or obligor;
25 2. The identity of the person; and

1 applies to a transaction or lien within its scope, even if the transaction or lien was
2 entered into or created before the effective date of this subsection [revisor inserts
3 date].

4 (2) CONTINUING VALIDITY. Except as otherwise provided in sub. (3) and ss.
5 409.703 to 409.709:

6 (a) Transactions and liens that were not governed by ch. 409, 1999 stats., were
7 validly entered into or created before effective date of this paragraph [revisor
8 inserts date], and would be subject to 1999 Wisconsin Act (this act) if they had
9 been entered into or created on or after the effective date of this paragraph [revisor
10 inserts date], and the rights, duties, and interests flowing from those transactions
11 and liens remain valid on and after the effective date of this paragraph [revisor
12 inserts date]; and

13 (b) The transactions and liens may be terminated, completed, consummated,
14 and enforced as required or permitted by 1999 Wisconsin Act (this act) or by the
15 law that otherwise would apply if this paragraph had not taken effect.

16 (3) PREEFFECTIVE-DATE PROCEEDINGS. 1999 Wisconsin Act (this act) does not
17 affect an action, case, or proceeding commenced before the effective date of this
18 subsection [revisor inserts date].

19 **409.703 Security interest perfected before effective date. (1)**
20 CONTINUING PRIORITY OVER LIEN CREDITOR: PERFECTION REQUIREMENTS SATISFIED. A
21 security interest that is enforceable immediately before the effective date of this
22 subsection [revisor inserts date], and would have priority over the rights of a
23 person that becomes a lien creditor at that time is a perfected security interest under
24 1999 Wisconsin Act (this act) if, on the effective date of this subsection [revisor

1 inserts date], the applicable requirements for enforceability and perfection under
2 1999 Wisconsin Act (this act) are satisfied without further action.

3 (2) CONTINUING PRIORITY OVER LIEN CREDITOR: PERFECTION REQUIREMENTS NOT
4 SATISFIED. Except as otherwise provided in s. 409.705, if, immediately before the
5 effective date of this subsection [revisor inserts date], a security interest is
6 enforceable and would have priority over the rights of a person that becomes a lien
7 creditor at that time, but the applicable requirements for enforceability or perfection
8 under 1999 Wisconsin Act (this act) are not satisfied as of the effective date of this
9 subsection [revisor inserts date], the security interest:

10 (a) Is a perfected security interest until one year after the effective date of this
11 paragraph [revisor inserts date];

12 (b) Remains enforceable on and after one year after the effective date of this
13 paragraph [revisor inserts date], only if the security interest becomes enforceable
14 under s. 409.203 before one year after the effective date of this paragraph [revisor
15 inserts date]; and

16 (c) Remains perfected on and after one year after the effective date of this
17 paragraph [revisor inserts date], only if the applicable requirements for perfection
18 under 1999 Wisconsin Act (this act) are satisfied before one year after the effective
19 date of this paragraph [revisor inserts date].

20 **409.704 Security interest unperfected before effective date.** A security
21 interest that is enforceable immediately before the effective date of this section
22 [revisor inserts date], but which would be subordinate to the rights of a person that
23 becomes a lien creditor at that time:

24 (1) Remains an enforceable security interest for one year after the effective
25 date of this subsection [revisor inserts date];

1 (2) Remains enforceable on and after one year after the effective date of this
2 subsection [revisor inserts date], if the security interest becomes enforceable
3 under s. 409.203 on the effective date of this subsection [revisor inserts date], or
4 within one year thereafter; and

5 (3) Becomes perfected:

6 1. Without further action, on the effective date of this subdivision [revisor
7 inserts date], if the applicable requirements for perfection under 1999 Wisconsin Act
8 (this act) are satisfied before or at that time; or

9 2. When the applicable requirements for perfection are satisfied if the
10 requirements are satisfied after that time.

11 **409.705 Effectiveness of action taken before effective date. (1)**

12 PREEFFECTIVE-DATE ACTION; ONE-YEAR PERFECTION PERIOD UNLESS REPERFECTED. If
13 action, other than the filing of a financing statement, is taken before the effective
14 date of this subsection [revisor inserts date], and the action would have resulted
15 in priority of a security interest over the rights of a person that becomes a lien
16 creditor had the security interest become enforceable before the effective date of this
17 subsection [revisor inserts date], the action is effective to perfect a security
18 interest that attaches under 1999 Wisconsin Act (this act) before the effective date
19 of this subsection [revisor inserts date]. An attached security interest becomes
20 unperfected one year after the effective date of this subsection [revisor inserts
21 date], unless the security interest becomes a perfected security interest under 1999
22 Wisconsin Act (this act) before one year after the effective date of this subsection
23 [revisor inserts date].

24 (2) PREEFFECTIVE-DATE FILING. The filing of a financing statement before the
25 effective date of this subsection [revisor inserts date], is effective to perfect a

1 security interest to the extent that the filing would satisfy the applicable
2 requirements for perfection under 1999 Wisconsin Act (this act).

3 (3) PREEFFECTIVE-DATE FILING IN JURISDICTION FORMERLY GOVERNING PERFECTION.
4 1999 Wisconsin Act (this act) does not render ineffective an effective financing
5 statement that, before the effective date of this subsection [revisor inserts date],
6 is filed and satisfies the applicable requirements for perfection under the law of the
7 jurisdiction governing perfection as provided in s. 409.103, 1999 stats. However,
8 except as otherwise provided in subs. (4) and (5) and s. 409.706, the financing
9 statement ceases to be effective at the earlier of:

10 (a) The time the financing statement would have ceased to be effective under
11 the law of the jurisdiction in which it is filed; or

12 (b) June 30, 2006.

13 (4) CONTINUATION STATEMENT. The filing of a continuation statement on or after
14 the effective date of this subsection [revisor inserts date], does not continue the
15 effectiveness of the financing statement filed before the effective date of this
16 subsection [revisor inserts date]. However, upon the timely filing of a
17 continuation statement on or after the effective date of this subsection [revisor
18 inserts date], and in accordance with the law of the jurisdiction governing perfection
19 as provided in subch. III, the effectiveness of a financing statement filed in the same
20 office in that jurisdiction before the effective date of this subsection [revisor
21 inserts date], continues for the period provided by the law of that jurisdiction.

22 (5) APPLICATION OF SUB. (3) (B) TO TRANSMITTING UTILITY FINANCING STATEMENT.
23 Subsection (3) (b) applies to a financing statement that, before the effective date of
24 this subsection [revisor inserts date], is filed against a transmitting utility and
25 satisfies the applicable requirements for perfection under the law of the jurisdiction

1 governing perfection as provided in s. 409.103, 1999 stats., only to the extent that
2 subch. III provides that the law of a jurisdiction other than the jurisdiction in which
3 the financing statement is filed governs perfection of a security interest in collateral
4 covered by the financing statement.

5 (6) APPLICATION OF SUBCH. V. A financing statement that includes a financing
6 statement filed before the effective date of this subsection [revisor inserts date],
7 and a continuation statement filed on or after the effective date of this subsection
8 [revisor inserts date], is effective only to the extent that it satisfies the requirements
9 of subch. V for an initial financing statement.

10 **409.706 When initial financing statement suffices to continue**
11 **effectiveness of financing statement.** (1) INITIAL FINANCING STATEMENT IN LIEU
12 OF CONTINUATION STATEMENT. The filing of an initial financing statement in the office
13 specified in s. 409.501 continues the effectiveness of a financing statement filed
14 before the effective date of this subsection [revisor inserts date], if:

15 (a) The filing of an initial financing statement in that office would be effective
16 to perfect a security interest under 1999 Wisconsin Act (this act);

17 (b) The preeffective-date financing statement was filed in an office in another
18 state or another office in this state; and

19 (c) The initial financing statement satisfies sub. (3).

20 (2) PERIOD OF CONTINUED EFFECTIVENESS. The filing of an initial financing
21 statement under sub. (1) continues the effectiveness of the preeffective-date
22 financing statement:

23 (a) If the initial financing statement is filed before the effective date of this
24 paragraph [revisor inserts date], for the period provided in s. 409.403, 1999 stats.,
25 with respect to a financing statement; and

1 (b) If the initial financing statement is filed on or after the effective date of this
2 paragraph [revisor inserts date], for the period provided in s. 409.515 with respect
3 to an initial financing statement.

4 (3) REQUIREMENTS FOR INITIAL FINANCING STATEMENT UNDER SUB. (1). To be
5 effective for purposes of sub. (1), an initial financing statement must:

6 (a) Satisfy the requirements of subch. V for an initial financing statement;

7 (b) Identify the preeffective-date financing statement by indicating the office
8 in which the financing statement was filed and providing the dates of filing and file
9 numbers, if any, of the financing statement and of the most recent continuation
10 statement filed with respect to the financing statement; and

11 (c) Indicate that the preeffective-date financing statement remains effective.

12 **409.707 Amendment of preeffective-date financing statement. (1)**
13 PREEFFECTIVE-DATE FINANCING STATEMENT. In this section, “preeffective-date
14 financing statement” means a financing statement filed before the effective date of
15 this subsection [revisor inserts date].

16 (2) APPLICABLE LAW. On or after the effective date of this subsection [revisor
17 inserts date], a person may add or delete collateral covered by, continue or terminate
18 the effectiveness of, or otherwise amend the information provided in, a
19 preeffective-date financing statement only in accordance with the law of the
20 jurisdiction governing perfection as provided in subch. III. However, the
21 effectiveness of a preeffective-date financing statement also may be terminated in
22 accordance with the law of the jurisdiction in which the financing statement is filed.

23 (3) METHOD OF AMENDING: GENERAL RULE. Except as otherwise provided in sub.
24 (4), if the law of this state governs perfection of a security interest, the information

1 in a preeffective–date financing statement may be amended on or after the effective
2 date of this subsection [revisor inserts date], only if:

3 (a) The preeffective–date financing statement and an amendment are filed in
4 the office specified in s. 409.501;

5 (b) An amendment is filed in the office specified in s. 409.501 concurrently with,
6 or after the filing in that office of, an initial financing statement that satisfies s.
7 409.706 (3); or

8 (c) An initial financing statement that provides the information as amended
9 and satisfies s. 409.706 (3) is filed in the office specified in s. 409.501.

10 (4) METHOD OF AMENDING: CONTINUATION. If the law of this state governs
11 perfection of a security interest, the effectiveness of a preeffective–date financing
12 statement may be continued only under s. 409.705 (4) and (6) or 409.706.

13 (5) METHOD OF AMENDING: ADDITIONAL TERMINATION RULE. Whether or not the law
14 of this state governs perfection of a security interest, the effectiveness of a
15 preeffective–date financing statement filed in this state may be terminated on or
16 after the effective date of this subsection [revisor inserts date], by filing a
17 termination statement in the office in which the preeffective–date financing
18 statement is filed, unless an initial financing statement that satisfies s. 409.706 (3)
19 has been filed in the office specified by the law of the jurisdiction governing perfection
20 as provided in subch. III as the office in which to file a financing statement.

21 **409.708 Persons entitled to file initial financing statement or**
22 **continuation statement.** A person may file an initial financing statement or a
23 continuation statement under this subchapter if:

24 (1) The secured party of record authorizes the filing; and

25 (2) The filing is necessary under this subchapter:

1 (a) To continue the effectiveness of a financing statement filed before the
2 effective date of this paragraph [revisor inserts date]; or

3 (b) To perfect or continue the perfection of a security interest.

4 **409.709 Priority. (1) LAW GOVERNING PRIORITY.** 1999 Wisconsin Act (this
5 act) determines the priority of conflicting claims to collateral. However, if the
6 relative priorities of the claims were established before the effective date of this
7 subsection [revisor inserts date], ch. 409, 1999 stats., determines priority.

8 **(2) PRIORITY IF SECURITY INTEREST BECOMES ENFORCEABLE UNDER S. 409.203.** For
9 purposes of s. 409.322 (1), the priority of a security interest that becomes enforceable
10 under s. 409.203 dates from the effective date of this subsection [revisor inserts
11 date], if the security interest is perfected under 1999 Wisconsin Act (this act) by
12 the filing of a financing statement before the effective date of this subsection
13 [revisor inserts date], which would not have been effective to perfect the security
14 interest under ch. 409, 1999 stats. This subsection does not apply to conflicting
15 security interests each of which is perfected by the filing of such a financing
16 statement.

17 **409.710 Special transitional provision for maintaining and searching**
18 **local filing office records. (1) DEFINITIONS.** In this section:

19 (a) “Former-ch.-409 records”:

20 1. Means:

21 a. Financing statements and other records that have been filed in a local filing
22 office before July 1, 2001, and that are, or upon processing and indexing will be,
23 reflected in the index maintained, as of June 30, 2001, by the local filing office for
24 financing statements and other records filed in the local filing office before July 1,
25 2001; and

1 b. The index as of June 30, 2001.

2 2. Does not include records presented to a local filing office for filing after June
3 30, 2001, whether or not the records relate to financing statements filed in the local
4 filing office before July 1, 2001.

5 (b) “Local filing office” means a filing office, other than the department of
6 financial institutions, that is designated as the proper place to file a financing
7 statement under s. 409.401 (1), 1999 stats., with respect to a record that covers a type
8 of collateral as to which the filing office is designated in that subsection as the proper
9 place to file.

10 (2) PROHIBITION OF FILING AFTER JUNE 30, 2001. A local filing office shall not accept
11 for filing a record presented after June 30, 2001, whether or not the record relates
12 to a financing statement filed in the local filing office before July 1, 2001.

13 (3) MAINTENANCE OF RECORDS. Until July 1, 2008, each local filing office must
14 maintain all former-ch.-409 records in accordance with ch. 409, 1999 stats. A
15 former-ch.-409 record that is not reflected on the index maintained at June 30, 2001,
16 by the local filing office must be processed and indexed, and reflected on the index
17 as of June 30, 2001, as soon as practicable but in any event no later than July 30,
18 2001.

19 (4) INFORMATION REQUESTS. Until at least June 30, 2008, each local filing office
20 must respond to requests for information with respect to former-ch.-409 records
21 relating to a debtor and issue certificates, in accordance with ch. 409, 1999 stats. The
22 fees charged for responding to requests for information relating to a debtor and
23 issuing certificates with respect to former-ch.-409 records must be the fees in effect
24 under ch. 409, 1999 stats., on June 30, 2001, unless a different fee is later set by the
25 local filing office. However, the different fee must not exceed the amount set by

1 filing-office rule for responding to a request for information relating to a debtor or
2 for issuing a certificate. This subsection does not require that a fee be charged for
3 remote access searching of the filing-office data base. The rule promulgated
4 pursuant to this subsection need not specify a fee for remote access searching of the
5 filing-office data base.

****NOTE: Subsection (4) is conformed to the change to s. 409.525 directing the department of financial institutions to set fees by rule. Under this subsection, the department will set by rule the maximum fees that can be charged during the 7-year transition period and the local filing offices will start with the current fees and are permitted to increase them up to the maximum set by DFI by rule.

6 (5) DESTRUCTION OF RECORDS. After June 30, 2008, each local filing office may
7 remove and destroy, in accordance with any then-applicable record retention law of
8 this state, all former-ch.-409 records, including the related index.

9 (6) EXCLUSION. This section does not apply, with respect to financing
10 statements and other records, to a filing office in which mortgages or records of
11 mortgages on real property are required to be filed or recorded, if:

12 (a) The collateral is timber to be cut or as-extracted collateral; or

13 (b) The record is or relates to a financing statement filed as a fixture filing and
14 the collateral is goods that are or are to become fixtures.

15 SECTION 79. 411.103 (3) (a) of the statutes is amended to read:

16 411.103 (3) (a) "Account" — s. ~~409.106~~ 409.102 (1) (ag).

17 SECTION 80. 411.103 (3) (d) of the statutes is amended to read:

18 411.103 (3) (d) "Chattel paper" — s. ~~409.105 (1) (b)~~ 409.102 (1) (cm).

19 SECTION 81. 411.103 (3) (e) of the statutes is amended to read:

20 411.103 (3) (e) "Consumer goods" — s. ~~409.109 (1)~~ 409.102 (1) (fm).

21 SECTION 82. 411.103 (3) (f) of the statutes is amended to read:

22 411.103 (3) (f) "Document" — s. ~~409.105 (1) (f)~~ 409.102 (1) (hg).

1 **SECTION 83.** 411.103 (3) (h) of the statutes is amended to read:

2 411.103 (3) (h) “General ~~intangibles~~ intangible” — s. ~~409.106~~ 409.102 (1) (kg).

3 **SECTION 84.** 411.103 (3) (j) of the statutes is amended to read:

4 411.103 (3) (j) “Instrument” — s. ~~409.105 (1) (i)~~ 409.102 (1) (Lm).

5 **SECTION 85.** 411.103 (3) (L) of the statutes is amended to read:

6 411.103 (3) (L) “Mortgage” — s. ~~409.105 (1) (j)~~ 409.102 (1) (nm).

7 **SECTION 86.** 411.103 (3) (m) of the statutes is amended to read:

8 411.103 (3) (m) “Pursuant to commitment” — s. ~~409.105 (1) (k)~~ 409.102 (1) (qs).

9 **SECTION 87.** 411.303 (1) and (2) of the statutes are amended to read:

10 411.303 (1) In this section, “creation of a security interest” includes the sale of
11 a lease contract that is subject to ch. 409 under s. ~~409.102 (1) (b)~~ 409.109 (1) (c).

12 (2) Except as provided in ~~subs. sub. (3) and (4)~~ s. 409.407, a provision in a lease
13 agreement that prohibits the voluntary or involuntary transfer, including a transfer
14 by sale, sublease, creation or enforcement of a security interest, or attachment, levy,
15 or other judicial process, of an interest of a party under the lease contract or of the
16 lessor’s residual interest in the goods, or that makes such a transfer an event of
17 default, gives rise to the rights and remedies provided in sub. ~~(5)~~ (4), but a transfer
18 that is prohibited or is an event of default under the lease agreement is otherwise
19 effective.

20 **SECTION 88.** 411.303 (3) of the statutes is repealed.

21 **SECTION 89.** 411.303 (4) of the statutes is renumbered 411.303 (3) and amended
22 to read:

23 411.303 (3) A provision in a lease agreement that prohibits a transfer of a right
24 to damages for default with respect to the whole lease contract or of a right to
25 payment arising out of the transferor’s due performance of the transferor’s entire

1 obligation, or that makes such a transfer an event of default, is not enforceable, and
2 such a transfer is not a transfer that materially impairs the prospect of obtaining
3 return performance by, materially changes the duty of, or materially increases the
4 burden or risk imposed on, the other party to the lease contract within the purview
5 of sub. ~~(5)~~ (4).

6 **SECTION 90.** 411.303 (5) of the statutes is renumbered 411.303 (4), and 411.303
7 (4) (intro.), as renumbered, is amended to read:

8 411.303 (4) (intro.) Subject to ~~subs.~~ sub. (3) and (4) s. 409.407:

9 **SECTION 91.** 411.303 (6), (7) and (8) of the statutes are renumbered 411.303 (5),
10 (6) and (7).

11 **SECTION 92.** 411.307 (2) (intro.) and (a) of the statutes are consolidated,
12 renumbered 411.307 (2) and amended to read:

13 411.307 (2) Except as provided in ~~subs.~~ sub. (3) and ~~(4)~~ and ss. 411.306 and
14 411.308, a creditor of a lessor takes subject to the lease contract unless ~~any of the~~
15 ~~following occurs:~~ (a) ~~The~~ the creditor holds a lien that attached to the goods before
16 the lease contract became enforceable.

17 **SECTION 93.** 411.307 (2) (b) and (c) of the statutes are repealed.

18 **SECTION 94.** 411.307 (3) of the statutes is repealed and recreated to read:

19 411.307 (3) Except as otherwise provided in ss. 409.317, 409.321, and 409.323,
20 a lessee takes a leasehold interest subject to a security interest held by a creditor of
21 the lessor.

22 **SECTION 95.** 411.307 (4) of the statutes is repealed.

23 **SECTION 96.** 411.309 (1) (c) of the statutes is amended to read:

24 411.309 (1) (c) "Fixture filing" means a filing, in the office where a record of a
25 mortgage on real estate would be filed or recorded, of a financing statement covering

1 goods that are or are to become fixtures and conforming to the requirements of s.
2 ~~409.402 (5)~~ 409.502 (1) and (2).

3 **SECTION 97.** 421.301 (21) of the statutes is amended to read:

4 421.301 (21) “Goods” has the meaning given in s. 409.102 (1) (ks) and includes
5 goods (~~s. 409.105~~) not in existence at the time the transaction is entered into and
6 goods which are or are to become fixtures.

7 **SECTION 98.** 422.413 (2r) (intro.) of the statutes is amended to read:

8 422.413 (2r) (intro.) Notwithstanding s. ~~409.504~~ 409.615 (1), the proceeds of
9 any disposition of collateral referred to in sub. (2g) shall be applied in the following
10 order to:

11 **SECTION 99.** 422.413 (2r) (f) of the statutes is amended to read:

12 422.413 (2r) (f) The satisfaction of indebtedness secured by any subordinate
13 security interest in the collateral, subject to the restrictions set forth in s. ~~409.504~~
14 409.615 (1) (c) and (2).

15 **SECTION 100.** 425.105 (4) of the statutes is amended to read:

16 425.105 (4) With respect to consumer credit transactions in which the creditor
17 has a security interest in, and possession of, instruments or documents (~~s. 409.105~~),
18 as each is defined in s. 409.102 (1), which threaten to decline speedily in value, this
19 section does not restrict the creditor’s rights to dispose of such property pursuant to
20 ~~s. 409.504 subch. VI of ch. 409~~ and the terms of the creditor’s security agreement.

21 **SECTION 101.** 425.203 (3) (intro.) of the statutes is amended to read:

22 425.203 (3) (intro.) Following recovery of collateral pursuant to a judgment
23 under sub. (2), the merchant may either retain the collateral in full satisfaction of
24 the customer’s obligation pursuant to ~~s. 409.505~~ ss. 409.620 to 409.624, in which

1 event the merchant shall satisfy the judgment obtained pursuant to sub. (2); or shall
2 dispose of the collateral pursuant to ~~s. 409.504~~ subch. VI of ch. 409, in which event:

3 **SECTION 102.** 425.204 (2) of the statutes is amended to read:

4 425.204 (2) The rights and obligations of the merchant and customer with
5 respect to collateral voluntarily surrendered as defined in this section shall be
6 governed by ~~ss. 409.504 to 409.507~~ subch. VI of ch. 409, and are not subject to this
7 subchapter.

8 **SECTION 103.** 425.207 (2) of the statutes is amended to read:

9 425.207 (2) A merchant who reasonably believes that a customer has
10 abandoned collateral or goods subject to a consumer lease may take possession of
11 such collateral or leased goods and preserve it. However, the customer may recover
12 such collateral or leased goods upon request unless at the time of request the
13 customer has surrendered the collateral or leased goods, or judgment for the
14 merchant has been entered in a proceeding for recovery of collateral or leased goods
15 under s. 425.205 or in a judgment described in s. 425.203 (2). A merchant taking
16 possession of collateral or leased goods pursuant to this section shall promptly send
17 notification to the customer's last-known address of such action and of the
18 customer's right to recover such collateral or leased goods under this section. If the
19 collateral or leased goods are recovered by the customer pursuant to this section, it
20 shall be returned to the customer at the location where the merchant took possession
21 of such collateral or leased goods pursuant to this section or, at the option of the
22 merchant, at such other location designated by the customer; and any expense
23 incurred by the merchant in taking possession of, holding and returning the
24 collateral or leased goods to the customer shall be borne by the merchant. If after
25 taking possession of collateral or leased goods pursuant to this subsection, the

1 merchant perfects the right to possession through a surrender by the customer or a
2 judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set
3 forth in s. ~~409.504~~ 409.615 (1). In determining such expenses, leased goods shall be
4 considered collateral under s. ~~409.504~~ 409.615 (1). However, a customer is not liable
5 for expenses of holding the collateral or leased goods from the time the merchant
6 takes possession until the merchant perfects the right to possession in the manner
7 provided in this subsection.

8 **SECTION 104.** 425.208 (6) of the statutes is amended to read:

9 425.208 (6) The creditor shall not dispose of the collateral or enter into a
10 contract for the disposition of the collateral, until the expiration of the period for
11 redemption provided in this section, unless the collateral is perishable or threatens
12 to decline speedily in value. Upon the expiration of such period any disposition of the
13 collateral shall be subject to ~~ss. 409.504, 409.505 and 409.506~~ subch. VI of ch. 409,
14 except that the customer may be liable for a deficiency only to the extent provided
15 in ss. 425.209 and 425.210.

16 **SECTION 105.** 779.48 (2) of the statutes is amended to read:

17 779.48 (2) Every person given a lien by ss. 779.41 and 779.43 (3) may in case
18 the claim remains unpaid for 2 months after the debt is incurred, and a person given
19 a lien under s. 779.47 (2) may if the claim remains unpaid 90 days after the lien is
20 perfected, enforce such lien by sale of the property substantially in conformity with
21 ~~ss. 409.501 to 409.507~~ subch. VI of ch. 409 and the lien claimant shall have the rights
22 and duties of a secured party thereunder. When such sections are applied to the
23 enforcement of such lien the word debtor or equivalent when used therein shall be
24 deemed to refer to the owner of the property and any other person having an interest
25 shown by instrument filed as required by law or shown in the records of the

1 department of transportation, and the word indebtedness or equivalent shall include
2 all claims upon which such lien is based.

3 **SECTION 106.** 779.89 of the statutes is amended to read:

4 **779.89 Attachment and preservation.** All prepaid maintenance liens
5 attach at the time of the first prepayment and shall be preserved from the time the
6 lien attaches. It is not necessary to file or record any notice of the lien in order to
7 preserve or perfect the lien although a customer may file this lien in the manner
8 prescribed for perfecting liens under subch. III of ch. 409 regarding debtors who are
9 located in this state.

10 **SECTION 107.** 779.91 (2) of the statutes is amended to read:

11 779.91 (2) Upon discharge of a prepaid maintenance lien, any customer who
12 filed the lien as permitted in s. 779.89 is subject to the requirements of s. 409.404
13 409.513.

14 **SECTION 108.** 779.97 (4) (a) 1. of the statutes is amended to read:

15 779.97 (4) (a) 1. With the department of financial institutions, the filing officer
16 shall cause the notice to be ~~marked, held and indexed~~ dealt with in accordance with
17 s. ~~409.403 (4)~~ 409.519 as if the notice were a financing statement within the meaning
18 of chs. 401 to 411; or

19 **SECTION 109.** 779.97 (4) (b) 1. of the statutes is amended to read:

20 779.97 (4) (b) 1. If a refiling of a notice of lien is presented to the department
21 of financial institutions for filing, the filing officer shall cause the refiled notice of
22 federal lien to be ~~marked, held and indexed~~ dealt with in accordance with s. ~~409.403~~
23 409.519 as if the refiling were a continuation statement within the meaning of chs.
24 401 to 411, except that the time period in par. (d) shall apply instead of the time period
25 in s. ~~409.403 (2) and (3)~~ 409.515.

1 **SECTION 110.** 779.97 (4) (b) 2. of the statutes is amended to read:

2 779.97 (4) (b) 2. If a certificate of release is presented to the department of
3 financial institutions for filing, the filing officer shall cause the certificate to be
4 ~~marked, held and indexed~~ dealt with in accordance with s. 409.404 409.513 as if the
5 certificate were a termination statement within the meaning of chs. 401 to 411, and
6 the filing officer may remove the notice of federal lien and any related refiling of a
7 notice of lien, certificate of nonattachment, discharge or subordination from the files
8 at any time after receipt of the certificate of release, but the department of financial
9 institutions shall keep the certificate of release or a microfilm or other photographic
10 record or optical disk or electronic record of the certificate of release in a file, separate
11 from those containing currently effective notices of liens, for a period of 30 years after
12 the date of filing of the certificate of release.

13 **SECTION 111.** 779.97 (4) (b) 3. of the statutes is amended to read:

14 779.97 (4) (b) 3. If a certificate of discharge is presented to the department of
15 financial institutions for filing, the filing officer shall cause the certificate to be
16 ~~marked, held and indexed~~ dealt with as if the certificate were a ~~release of collateral~~
17 an amendment that deletes collateral within the meaning of chs. 401 to 411.

18 **SECTION 112.** 779.97 (4) (b) 4. of the statutes is amended to read:

19 779.97 (4) (b) 4. If a certificate of nonattachment or subordination of any lien
20 is presented to the department of financial institutions for filing, the filing officer
21 shall cause the certificate to be ~~marked, held and indexed~~ dealt with as if the
22 certificate were an amendment that deletes collateral within the meaning of chs. 401
23 to 411.

24 **SECTION 113.** 779.97 (4) (d) of the statutes is amended to read:

1 779.97 (4) (d) Unless a refiling of a notice of lien is presented to a filing officer
2 for filing within 11 years and 60 days after the date on which a notice of lien or the
3 latest refiling of a notice of that lien is filed with that officer, the filing officer may
4 remove the notice of federal lien and any related refiling of a notice of lien, certificate
5 of nonattachment, discharge or subordination from the files. Any refiling of a notice
6 of lien presented to a filing officer after such removal shall be ~~marked, held and~~
7 ~~indexed~~ dealt with as though the document were a notice of federal lien instead of
8 a refiling of a notice of lien.

9 **SECTION 114.** 779.97 (4) (e) of the statutes is amended to read:

10 779.97 (4) (e) Upon request of any person, the filing officer shall issue a
11 certificate showing whether there is on file, on the date and hour stated therein, any
12 notice of federal lien or any related refiling of a notice of lien, certificate of
13 nonattachment, discharge or subordination filed on or after February 1, 1968,
14 naming a particular person, and if a notice or certificate is on file, giving the date and
15 hour of filing of each notice or certificate. ~~The fee for a certificate is \$2. Upon request~~
16 ~~the filing officer shall furnish a copy of any notice of federal lien or notice or certificate~~
17 ~~affecting a federal lien for a fee of 50 cents per page~~ If the filing officer is the
18 department of financial institutions, the filing officer shall include the information
19 concerning the notice of federal lien, or notice or certificate affecting a federal lien,
20 in the information communicated or otherwise made available in response to a
21 request under s. 409.523 (3), and the fee charged shall be that charged in accordance
22 with s. 409.525.

23 **SECTION 115.** 815.18 (2) (i) of the statutes is amended to read:

24 815.18 (2) (i) “Farm products” has the meaning given under s. ~~409.109 (3)~~
25 409.102 (1) (im).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0028/R1dn
TJD:kmg:km

September 27, 2000

This 2001 session draft is 1999 LRB-1446/P11 updated to reflect changes to the statutes made in the latter part of the 1999-2000 legislative session and the forms in ss. 409.521 and 409.613 checked for accuracy.

In reformatting Article 9-Secured Transactions to the repeal and recreation of ch. 409, Wis. Stats., and the conforming amendments to other articles to changes to *chs.* 401 to 411, the following conversions were made: Uniform Commercial Code-*chs.* 401 to 411; article-chapter; part-subchapter; subpart title-deleted it; Section 9-101 to s. 409.101 up through Section 9-710 to s. 409.710; act-*chs.* 401 to 411 (except in subchapter 7, this act-1999 Wisconsin Act (this act)); article 2A-ch. 411; article 1, etc., up to article 9-ch. 401, etc., up to ch. 409; section 9-403 (b) (4) and most other subsections and paragraphs-s. 409.403 (2) (d) and many other subsections and paragraphs; Section-s.; Sections-*ss.*; Subsection-sub.; Subsections-*subs.*; Paragraph-par.; Paragraphs-*pars.*; Subdivision-subd.; Subdivisions-*subsds.*; regulation (only when referring to state regulations)-rule; cross-references (to a series) through-to; lowercased Governor, Legislature, and State; changed percent to %, indorse to endorse, adopt to promulgate (when referring to rules), one, etc., up to ten to 1 up to 10, "when act takes effect" to "the effective date of this subsection, etc., [revisor inserts date]," and attorney's fees to attorneys fees; deleted the hyphen in health-care, set-off, pre-effective, and non-consumer; initial capped the first word in every statutory unit, including paragraphs and subdivisions and lower units; bolded subsection numbers and retyped, bolded, and lowercased section titles, except for the first word; retained optional subsection titles in ch. 409; and inserted spaces in cross-references between the subsection and paragraph, between the paragraph and subdivision, and between the subdivision and lower unit. Inserted into the draft in s. 409.102 (1) were the definitions from Revised UCC Article 5 that are cross-referenced in Revised Article 9. The references to those cross-references are deleted from the listing in s. 409.102 (2). **WISCONSIN HAS YET TO ENACT REVISED ARTICLE 5 (CH. 405, WIS. STATS.). IF REVISED ARTICLE 5 IS ENACTED 2ND, IT NEEDS TO REPEAL THESE AND INSTEAD REINSERT THEM IN S. 409.102 (2) OF REVISED ARTICLE 9. IF REVISED ARTICLE 9 IS ENACTED 2ND, IT NEEDS TO BE AMENDED TO DO THE SAME.** Changed references in ch. 409 to sections of Revised Article 5 over to references to ch. 405. Inserted into the draft and amended were all statutory units of the current statutes (other than in current ch. 409) that contain cross-references to any statutory unit in current ch. 409.

The new chapter 409 of the statutes reflects choices from the bracketed options in the new Article 9. In addition, the new chapter 409 of the statutes has several nonuniform changes:

1. s. 409.203 (4) (b) is added to carry over the thrust of current s. 409.203 (2) regarding the signature of one spouse relating to marital property;
2. s. 409.311 (1) (bm) is added to carry over current s. 409.302 (3) (bm) regarding boat titling like car titling;
3. s. 409.311 (1) (d) is added to carry over current s. 409.302 (3) (d) regarding certain central filing provisions;
4. s. 409.311 (1) (e) is added to carry over current ss. 16.76 (4) and 409.302 (3) (e) regarding master leases by the state;
5. s. 409.311 (1) (f) is added to carry over current s. 409.302 (3) (f) regarding manufactured home titling like car titling;
6. s. 409.406 (6) is changed to add a cross-reference to current s. 565.30 to continue the applicability of s. 565.30 regarding lottery prizes;
7. ss. 409.519 (8), 409.520 (2), and 409.523 (5) are changed to give the department of financial institutions a five-day rather than a two-day period (but only for the two years after the effective date of the act) to comply with the requirements in those statutes;
8. s. 409.523 (7) is added to carry over current s. 409.407 (3) regarding personal liability of filing officers;
9. ss. 409.525 and 409.710 (4) are changed to require the department of financial institutions to set fees by rule rather than having fees set by statute;
10. s. 409.527 is changed to require that a biennial report be included in the department's currently required biennial report, rather than to require that an annual report be sent separately to the legislature; and
11. s. 409.528 is added to carry over the requirement for a statewide lien registration computer system by recreating current s. 409.410 as modified to fit the new chapter.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0028/1dn
PJD:kmg:ch

December 6, 2000

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